IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

TUESDAY, THE 27TH FEBRUARY 2007 / 8TH PHALGUNA 1928

WP(C).No. 6436 of 2007(N)
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DRC.2219/ 0 of DEBT RECOVERY TRIBUNAL, ERNAKULAM
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PETITIONER:
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MULACKAL CONSTRUCTIONS,
REPRESENTED BY ITS MANAGING PARTNER,
SAHED MOHAMMED RAWTHER, AGED 64 YEARS,
S/O. HAJEE M.A. PAREED RAWTHER, MULACKAL HOUSE,
SOUTH PETTAH, MUVATTUPUZHA.

BY ADV. SRI.T.M.ABDUL LATHEEF

RESPONDENTS:
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1. DEBT RECOVERY OFFICER,
DEBT RECOVERY TRIBUNAL, PANAMPILLY NAGAR,ERNAKULAM

2. GENERAL MANAGER,
SOUTH INDIAN BANK, THRISSUR.

3. MANAGER,
SOUTH INDIAN BANK, MUVATTUPUZHA.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 27/02/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

K.BALAKRISHNAN NAIR, J.

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WP(C).No.6436 of 2007-N

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Dated this the 27th day of February, 2007.

**JUDGMENT**

The certificate scheduled properties of the petitioner are sought to be sold in public auction on 8-3-2007. The petitioner moved respondents 2 and 3, the General Manager and Manager of the Bank, to pay the amount due to the bank, under the one-time-settlement scheme. Though they have agreed to the proposal of the petitioner, they are not informing the first respondent of the same and therefore, the first respondent is proceeding with the same. So, this writ petition is filed, seeking the following reliefs:

> *i). To call for the records relating to Exts.P1 to P6 and to issue a writ of mandamus commanding the first respondent not to put the petitioner's property for sale on 8-3-2007 as notified in Ext.P4 and to allow the petitioner to pay of the balance amount due to the 3rd respondent under One Time Settlement as already agreed by the respondent (Bank);*
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> *ii). To issue a writ of mandamus declaring that the respondents have no legal right to put the property for sale after having accepted for One Time Settlement and the petitioner having paid amounts accepting the said settlement and also to direct the Bank to recover the balance amount in installments by fixing the One Time Settlement amount at Rupees 30 lakhs and after deducting the amount already paid and to*

*permit the petitioner to remit the balance amount within a period of one year."*

Ext.P4 mentioned in the first prayer is the sale proclamation.

2. Respondents 2 and 3 are not amenable to the writ jurisdiction of this court. Therefore, this court cannot issue any direction against the commissions and omissions of respondents 2 and 3. The first respondent cannot stop the sale also. The learned counsel for the petitioner brought to my notice Rule 15 of Second Schedule to the Income Tax Act, 1961 which was applicable to the sale by the first respondent. Rule 15 enables the first respondent to adjourn the sale in his discretion. But, the said power does not enable the first respondent to adjourn the sale in the facts and circumstances mentioned in this case. But, the Debts Recovery Tribunal is competent to stay the sale and grant time for payment of the amount under the recovery certificate, under Section 27 (1) of the Recovery of Debts due to Banks and Financial Institutions Act.

In the result, the Writ Petition is dismissed without prejudice to the contentions of the petitioner and its right to move the Debts Recovery Tribunal, under Section 27(1) of the above-said Act.

K.BALAKRISHNAN NAIR,
JUDGE.

MS